Timothy C. Houpt (USB #1543)
thoupt@joneswaldo.com
Billie J. Siddoway (USB #9710)
bsiddoway@joneswaldo.com
JONES WALDO HOLBROOK & McDONOUGH PC
170 South Main Street, Suite 1500
Salt Lake City, Utah 84101
Telephone: (801) 521-3200

Attorneys for Plaintiff Utah Housing Corporation

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UTAH HOUSING CORPORATION, Plaintiff, vs. CDR FINANCIAL PRODUCTS, INC.; INVESTMENT MANAGEMENT ADVISORY GROUP, INC.; FGIC CAPITAL MARKET SERVICES, INC.; TRINITY PLUS FUNDING COMPANY, LLC; NATIXIS FUNDING CORP.; BAYERISCHE LANDESBANK; AIG FINANCIAL PRODUCTS CORP.; TRANSAMERICA LIFE INSURANCE COMPANY; TRANSAMERICA LIFE INSURANCE AND ANNUITY COMPANY; and WESTDEUTSCHE LANDESBANK; Defendants.	**COMPLAINT and JURY DEMAND** Case No.: Judge:

Plaintiff Utah Housing Corporation ("UHC"), by and through its undersigned counsel, hereby alleges and complains against Defendants as follows:

PARTIES, JURISDICTION and VENUE

Plaintiff

1. Plaintiff Utah Housing Corporation ("Plaintiff" or "UHC") is an independent body politic and corporate, constituting a public corporation created by Utah Code § 9-4-904.

2. UHC has purchased Guaranteed Investment Contracts ("GICs") in connection with the issuance of its bonds which finance affordable housing for first-time homebuyers with low to moderate incomes.

GIC Brokers

3. Defendant CDR Financial Products, Inc. ("CDR") is a California corporation with its principal place of business in Beverly Hills, California. CDR was formerly known as Chambers, Dunhill, Rubin & Co., which was a California corporation with its principal place of business in California. CDR acted as a GIC broker for UHC.

4. Defendant Investment Management Advisory Group, Inc. ("IMAGE") is a Pennsylvania corporation with its principal place of business in Pottstown, Pennsylvania. IMAGE acted as a GIC broker for UHC.

5. CDR and IMAGE are referred to collectively herein as "Defendant Brokers."

GIC Providers

6. FGIC Capital Market Services, Inc. ("FGIC") is a Delaware corporation with its principal place of business in New York. FGIC submitted one or more winning bids to provide GICs to UHC.

7. Trinity Plus Funding Company, LLC ("Trinity") is a New York limited liability company with its principal place of business in New York. Trinity Plus submitted one or more winning bids on behalf of FGIC to provide GICs to UHC.

8. Defendant Natixis Funding Corp. ("Natixis"), formerly known as IXIS Funding Corp., and formerly known as CDC Funding Corp., is a New York corporation with its principal place of business in New York. Natixis submitted one or more winning bids to provide GICs to UHC.

9. Defendant Bayerische Landesbank ("Bayerische") is a German company with its principal place of business in Munich, Germany. Bayerische maintains a United States branch office in New York. Bayerische submitted one or more winning bids to provide GICs to UHC.

10. Defendant AIG Financial Products Corp. ("AIG") is a Delaware corporation with its principal place of business in New York. AIG submitted one or more winning bids to provide GICs to UHC.

11. Transamerica Life Insurance Company ("Transamerica") is an Iowa corporation with its principal place of business in Iowa. Transamerica submitted one or more winning bids to provide GICs to UHC.

12. Transamerica Life Insurance and Annuity Company ("TLIAC") was an Iowa corporation. TLIAC submitted one or more winning bids to provide GICs to UHC.

13. Westdeutsche Landesbank ("Westdeutsche") is a German company with it principal place of business in Dusseldorf, Germany. Westdeutsche maintains a United States branch office in New York. Westdeutsche submitted one or more winning bids to provide GICs to UHC.

14. Defendants FGIC, Trinity, Natixis, Baverische, AIG, and Westdeutsche are referred to collectively herein as "Defendant Providers."

Jurisdiction and Venue

15. Jurisdiction is proper in the U.S. District Court for the District of Utah pursuant to 28 U.S.C. §1331.

16. Venue is proper in this jurisdiction pursuant to 28 U.S.C. §1391(b).

BACKGROUND INFORMATION

17. Bonds are issued by states, counties, municipalities, and other public entities to raise funds to finance their activities. In the industry, these are often referred to as "municipal bonds".

18. UHC issues bonds to raise funds to finance its housing programs pursuant to Utah Code Section 9-4-913.

19. Because of the tax-exempt status of most municipal bonds, investors usually accept lower interest rates than on taxable investments. Because the interest rate available in the tax-free municipal bond market is often lower than other types of financing, the issuance of bonds is an attractive source of financing to public entities.

20. The issuer of a municipal bond receives cash at the time of issuance in exchange for a promise to repay the purchasers of the bonds (the bondholders) over the specified time. Repayment periods can vary from short term to 30 or more years.

21. In order for municipal bonds to maintain their tax-exempt status, regulations of the Internal Revenue Service ("IRS") generally require, with certain exceptions, that all money raised by a bond sale to be spent within three to five years of issuance.

22. The cash proceeds from the issuance of municipal bonds that are not spent immediately are invested to earn interest until they are needed. Several accounts with respect to each bond issue will be established, with different purposes and therefore different time frames, including accounts for the purchase of mortgages, for the payment of the costs of issuing the bonds and for interest reserves. In addition, an account will be established to hold revenues received from borrowers until they are needed to make the semi-annual payments to bondholders during the term of the bonds. Each such account needs to be invested.

23. Bond proceeds or revenues can be deposited in money market funds or they can be used to purchase GICs, repurchase agreements, forward purchase agreements, swaps, options or other investment products, generally known in the industry as municipal investment agreements, or municipal reinvestment agreements, or municipal derivatives (collectively referred to herein as "Municipal Investment Agreements").

24. A GIC is an agreement that guarantees a fixed interest rate on an investment for a predetermined period of time. A GIC generally allows a bond issuer to earn a higher interest rate than a traditional savings or money market account. A GIC is considered a safe and reliable investment vehicle. While a GIC is in the form of a bilateral agreement between a party wanting to earn interest on an investment and a party willing to pay interest on that investment, the parties will often refer to the transaction as involving the "purchase" of a GIC.

25. When a government entity, like UHC, desires to purchase a GIC, IRS regulations require that it engage a broker to conduct an auction among multiple potential providers of GICs in order to obtain the highest possible interest rate.

26. In a competitive market, providers would expect to compete against each other for the business of issuers on the basis of the highest interest rate on the GICs.

GENERAL ALLEGATIONS

THE NATURE OF THE BID-RIGGING CONSPIRACY

27. In 2009, UHC learned that the Antitrust Division of the U.S. Department of Justice ("DOJ") and other federal agencies were investigating anti-competitive bid-rigging activities among brokers and providers of GICs and other Municipal Investment Agreements.

28. Prior to learning of the federal investigation, UHC had no knowledge of or reason to investigate any bid-rigging activities in the purchase of GICs, despite the exercise of due diligence.

29. Unbeknownst to UHC, at the time that Defendants were offering GICs to Plaintiff and others, Defendants had entered into a continuing agreement, understanding and conspiracy to unreasonably restrain trade and commerce in the United States, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

30. The Defendant Providers combined and conspired to allocate customers and fix the interest rates paid to issuers under Municipal Investment Agreements sold in the United States through agreements not to compete and acts of bid rigging.

31. The Defendant Brokers knowingly participated in the illegal agreement, understanding, and conspiracy not to compete and to rig bids in order to win the favor of the Defendant Providers and share in the profits of the conspiracy, all in breach of their contractual and fiduciary duties and obligations to UHC.

32. Information concerning the workings of the conspiracy has been publicly revealed in court proceedings and media reports, many of which have cited to a confidential source.

33. The objective of the alleged illegal agreement, understanding, and conspiracy was to artificially suppress interest rates paid on Municipal Investment Agreements sold by the Defendant Providers.

34. The Defendant Providers knowingly and intentionally engaged in the bid-rigging activities with the understanding that they would take turns providing winning bids to the various government entities seeking Municipal Investment Agreements.

UHC's GIC Auctions

35. The Defendant Brokers conducted a number of auctions to provide GICs to UHC.

36. On September 9, 1999, CDR completed an auction as the broker for UHC on its Single Family Mortgage Bonds, 1999 Series E. Bidders included AIG, Bayerische, Natixis, TLIAC, New York Life Insurance Company ("New York Life"), HypoVereinsbank, and Société Générale. The successful bidder was AIG.

37. On October 21, 1999, CDR completed an auction as the broker for UHC on its Single Family Mortgage Bonds, 1999 Series F. Bidders included AIG, Bayerische, Natixis, New York Life, and TLIAC. The successful bidder was Bayerische.

38. On December 20, 1999, CDR completed an auction as the broker for UHC on its 1999 Series 3 and Series 4 bonds. The successful bidder was Westdeutsche.

39. On January 19, 2000, IMAGE completed an auction as the broker for UHC on its Single Family Mortgage Bonds, 2000 Issue A. Bidders included Natixis, Bayerische, AIG,

FGIC, and Monumental Life Insurance Company ("Monumental Life"). The successful bidders were Natixis and Bayerische.

40. On March 22, 2000, CDR completed an auction as the broker for UHC on its Single Family Mortgage Bonds, 2000 Issue B. Bidders included AIG, Bayerische, Natixis, FGIC, Transamerica, Monumental Life, and Westdeutsche. The successful bidder was Natixis.

41. On May 3, 2000, CDR completed an auction as the broker for UHC on its Single Family Mortgage Bonds, 2000 Issue C. Bidders included AIG, AMBAC Capital Funding, Inc. ("AMBAC"), Bayerische, Natixis, FGIC, and Westdeutsche. The successful bidder was Natixis.

42. On June 14, 2000, CDR completed an auction as the broker for UHC on its Single Family Mortgage Bonds, 2000 Series D. Bidders included Bayerische, Natixis, FGIC, Monumental, Transamerica, and Westdeutsche. The successful bidders were Natixis and Westdeutsche.

43. On June 22, 2000, CDR completed an auction as the broker for UHC on its Single Family Mortgage Variable Rate Bonds, 2000 Series 1. Bidders included Bayerische, Natixis, FGIC, and Monumental. The successful bidder was Bayerische.

44. On June 22, 2000, CDR completed an auction as the broker for UHC on its Single Family Mortgage Variable Rate Bonds, 2000 Series 2. Bidders included Bayerische, Natixis, FGIC and Monumental. The successful bidder was Bayerische.

45. On August 1, 2000, CDR completed an auction as the broker for UHC on its Single Family Mortgage Bonds, 2000 Series E. Bidders included Bayerische, Natixis, FGIC, Monumental, Transamerica and Westdeutsche. The successful bidder was Natixis.

46. On September 28, 2000, CDR completed an auction as the broker for UHC on its Single Family Mortgage Bonds, 2000 Series F. Bidders included Bayerische, Natixis, FGIC, Transamerica Occidental Life Insurance Company ("Occidental"), Transamerica (with an AMBAC wrap), and Westdeutsche. The successful bidder was Transamerica.

47. On December 7, 2000, CDR completed an auction as the broker for UHC on its Single Family Mortgage Bonds, 2000 Series G. Bidders included Bayerische, Natixis, FGIC (bidding through Trinity), Occidental, and Transamerica (with an AMBAC wrap). The successful bidder was FGIC.

48. On December 19, 2000, CDR completed an auction as the broker for UHC on its Single Family Mortgage Variable Rate Bonds, 2000 Series 3 Term Bonds. Bidders included Bayerische, Natixis, FGIC (through Trinity), and Transamerica. The successful bidder was FGIC.

49. On December 19, 2000, CDR completed an auction as the broker for UHC on its Single Family Mortgage Variable Rate Bonds, 2000 Series 4 Term Bonds. Bidders included Bayerische, Natixis, FGIC (through Trinity), and Transamerica. The successful bidder was FGIC.

50. On February 6, 2001, CDR completed an auction as the broker for UHC on its Single Family Mortgage Bonds, 2001 Series A. Bidders included Bayerische, Natixis, FGIC (through Trinity), Occidental, Transamerica (with an AMBAC wrap), and Westdeutsche. The successful bidder was FGIC.

51. On May 3, 2001, CDR completed an auction as the broker for UHC on its Single Family Mortgage Bonds, 2001 Series B. Bidders included Bayerische, Natixis, FGIC (through Trinity), and Occidental. The successful bidder was FGIC.

52. On June 14, 2001, CDR completed an auction as the broker for UHC on its Single Family Mortgage Variable Rate Bonds, 2001 Series 1 Term Bonds. Bidders included Bayerische, Natixis, and FGIC (through Trinity). The successful bidder was FGIC.

53. On June 14, 2001, CDR completed an auction as the broker for UHC on its Single Family Mortgage Variable Rate Bonds, 2001 Series 2 Term Bonds. Bidders included Bayerische, Natixis, and FGIC (through Trinity). The successful bidder was FGIC.

54. On June 21, 2001, CDR completed an auction as the broker for UHC on its its Single Family Mortgage Bonds, 2001 Series C. Bidders included Bayerische, Natixis, FGIC, and Occidental. The successful bidder was FGIC.

55. On August 7, 2001, CDR completed an auction as the broker for UHC on its Single Family Mortgage Bonds, 2001 Series D. Bidders were Bayerische, Natixis, FGIC (through Trinity), Occidental, and Transamerica (with an AMBAC wrap). The successful bidder was FGIC.

56. On September 20, 2001, CDR completed an auction as the broker for UHC on its Single Family Mortgage Bonds, 2001 Series E. Bidders were Bayerische, Natixis, FGIC (through Trinity), Occidental, and Transamerica (with an AMBAC wrap). The successful bidder was FGIC.

57. On December 12, 2001, CDR completed an auction as the broker for UHC on its Single Family Mortgage Variable Rate Bonds, 2001 Series 3 Term Bonds. The bidders were Bayerische, Natixis, FGIC, and Monumental. The successful bidder was Bayerische.

58. On November 7, 2001, CDR completed an auction as the broker for UHC on its Single Family Mortgage Bonds, 2001 Series F. The bidders were Bayerische, Natixis, FGIC (through Trinity), Occidental, and Transamerica (with an AMBAC wrap). The successful bidder was FGIC.

59. On January 17, 2002, CDR completed an auction as the broker for UHC on its Single Family Mortgage Bonds, 2002 Series A. The bidders were Bayerische, Natixis, FGIC (through Trinity), FSA, and Occidental. The successful bidder was Natixis.

60. On March 14, 2002, CDR completed an auction as the broker for UHC on its Single Family Mortgage Bonds, 2002 Series B. The bidders were Bayerische, Natixis, FGIC (through Trinity), FSA, and Occidental. The successful bidder was FGIC.

61. On May 2, 2002, CDR completed an auction as the broker for UHC on its Single Family Mortgage Bonds, 2002 Series C. The bidders were Bayerische, Natixis, FGIC, Occidental, and Transamerica (with an AMBAC wrap). The successful bidder was FGIC.

62. On June 12, 2002, CDR completed an auction as the broker for UHC on its Single Family Mortgage Variable Rate Bonds, 2002 Series 1 Term Bonds. The bidders were Bayerische, Natixis, FSA, and Monumental. The successful bidder was Bayerische.

63. On June 12, 2002, CDR completed an auction as the broker for UHC on its Single Family Mortgage Variable Rate Bonds, 2002 Series 2 Term Bonds. The bidders were Bayerische, Natixis, FSA, and Monumental. The successful bidder was Bayerische.

64. On June 20, 2002, CDR completed an auction as the broker for UHC on its Single Family Mortgage Bonds, 2002 Series D. The bidders were Bayerische, Natixis, FGIC (through Trinity), Occidental, and Transamerica (with an AMBAC wrap). The successful bidder was FGIC.

65. On August 2, 2002, CDR completed an auction as the broker for UHC on its Single Family Mortgage Bonds, 2002 Series E. The bidders were Bayerische, Natixis, FGIC (through Trinity), Occidental, and Transamerica (with an AMBAC wrap). The successful bidder was FGIC.

66. On September 19, 2002, CDR completed an auction as the broker for UHC on its Single Family Mortgage Bonds, 2002 Series F. The bidders were Bayerische, Natixis, FGIC (through Trinity), and Occidental. The successful bidder was Natixis.

67. On December 12, 2002, CDR completed an auction as the broker for UHC on its Single Family Mortgage Variable Rate Bonds, 2002 Series 3 Term Bonds. The bidders were Bayerische, Natixis, FSA, and Monumental. FGIC passed on the bid. Natixis noted that Trinity was at its capacity and could not write any business for one to two months. The successful bidder was Bayerische.

68. On December 12, 2002, CDR completed an auction as the broker for UHC on its Single Family Mortgage Variable Rate Bonds, 2002 Series 4 Term Bonds. The bidders were Bayerische, Natixis, FSA, and Monumental. FGIC passed on the bid, noting that Trinity was at its capacity and could not write any business for one to two months. The successful bidder was Bayerische.

69. On January 24, 2003, CDR completed an auction as the broker for UHC on its Single Family Mortgage Bonds, 2003 Series A. The bidders were Bayerische, Natixis, FGIC, Occidental, and Transamerica (with an AMBAC wrap). The successful bidder was FGIC.

70. On March 11, 2003, CDR completed an auction as the broker for UHC on its Single Family Mortgage Bonds, 2003 Series B. The bidders were Bayerische, Natixis, FGIC, TLIAC, and Transamerica (with an AMBAC wrap). The successful bidder was TLIAC.

71. On May 1, 2003, CDR completed an auction as the broker for UHC on its Single Family Mortgage Bonds, 2003 Series C. The bidders were Bayerische, Natixis, FGIC, TLIAC, and Transamerica (with an AMBAC wrap). The successful bidder was TLIAC.

72. On June 19, 2003, CDR completed an auction as the broker for UHC on its Single Family Mortgage Variable Rate Bonds, 2003 Series 1 Term Bonds. The bidders were Bayerische, Natixis, FGIC (through Trinity), and TLIAC. The successful bidder was Natixis.

73. On June 19, 2003, CDR completed an auction as the broker for UHC on its Single Family Mortgage Variable Rate Bonds, 2003 Series 2 Term Bonds. The bidders were Bayerische, Natixis, FGIC (through Trinity), and TLIAC. The successful bidder was Natixis.

74. On June 19, 2003, CDR completed an auction as the broker for UHC on its Single Family Mortgage Bonds, 2003 Series D. The bidders were AIG, Natixis, FGIC, TLIAC, and Transamerica (with an AMBAC wrap). The successful bidder was AIG.

75. On June 19, 2003, CDR completed an auction as the broker for UHC on its Single Family Mortgage Bonds, 2003 Series B, C & E. The bidders were Bayerische, Natixis, FGIC, Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. (“Rabobank”), and TLIAC. The successful bidder was Natixis.

76. On June 19, 2003, CDR completed an auction as the broker for UHC on its Single Family Mortgage Bonds, 2002 Series G. The bidders were Bayerische, Natixis, FGIC, Rabobank and TLIAC. The successful bidder was Natixis.

77. On September 10, 2003, CDR completed an auction as the broker for UHC on its Single Family Mortgage Bonds, 2003 Series F. The bidders were Bayerische, Natixis, FGIC, Rabobank and TLIAC. The successful bidder was TLIAC.

78. On or about November 21, 2003, IMAGE completed an auction as the broker for UHC on its Single Family Mortgage Bonds, 2003 Series G. The bidders were AGI, Bayerische, Rabobank, and Transamerica. The successful bidder was AIG.

79. When UHC needed the money invested in a particular GIC, the provider of that GIC would convey the principal and/or interest to UHC, often in the form of a wire transfer. For example, the successful bidder on the 2001 Series D bonds was FGIC through Trinity. On June 30, 2005, Trinity conveyed $1,724,509.87 to UHC by wire transfer. The payment consisted of a $1,430,000 principal draw on the 2001 Series D float fund GIC, $264,977.20 of interest on the 2001 Series D float fund GIC, and $29,532.67 of interest on the 2001 Series D reserve fund GIC.

INTERNAL REVENUE SERVICE INVESTIGATION

80. The IRS initiated investigation of collusive practices in the Municipal Investment Agreements industry. Its inquiry initially focused on dozens of municipal bond deals where the providers failed to pay approximately $100 million in taxes by engaging in abusive arbitrage devices. The IRS was concerned that some providers were overcharging issuers for GICs and other Municipal Investment Agreements. This would artificially lower, or "burn," investment

yields below the bond yield. The spread between the investment and bond yields was then passed to the provider, rather than rebated to the IRS as required by the federal tax laws.

81. Charles Anderson ("Anderson"), field operations manager of the IRS's tax-exempt bond office, has stated that "[i]t looks like bid rigging is wider and more pervasive than we thought."

82. Mark Scott ("Scott"), director of the IRS's tax-exempt bond office, publicly stated that "[w]hen a bid is 100 to 150 basis points below the market and there is no justification for that being so low, one of the assumptions you can draw is that there are courtesy bids being provided." These types of bids are "provided solely as a courtesy so that another banking organization can win on a bid that is below fair market value," according to Scott. "We have seen transactions where the winning bid is the only bid high enough to make the deal work." As Scott went on to note, "[t]hat's basically what we've been doing . . . is following those, what I like to refer to as 'tentacles of abuse.'"

83. As the IRS investigation progressed, Anderson stated that the regulators "think we have evidence of bid rigging." The IRS probe showed that investment contracts were sold at below market rates, according to Anderson. That means lower returns for municipalities and less tax revenue for the IRS. He added, "[p]eople were winning GICs at below fair market values and there were obviously deliberate losing bids by the losing bidders, thereby allowing the winner to win a sweetheart deal."

84. The IRS investigation led an investment banking firm to uncover transcripts of telephone conversations involving an employee that indicated the employee and other market participants were involved in bid-rigging in the market for Municipal Investment Agreements.

85. In addition to the IRS regulations concerning arbitrage, as well as the federal antitrust laws, the IRS regulations governing GIC bidding also have been broken. Besides discovering illegal arbitrage, the IRS has stated that it has uncovered instances of price-fixing, bid-rigging and kickbacks.

DEPARTMENT OF JUSTICE INVESTIGATION

86. In light of these revelations, the DOJ commenced its own investigation of the bid-rigging in the market for Municipal Investment Agreements. For the past two years, the DOJ has been examining whether there was collusion among financial institutions in the bidding process for GICs and other Municipal Investment Agreements. The DOJ is conducting an "investigation of anticompetitive practices in the municipal bond industry," said spokeswoman Kathleen Bloomquist. The investigation is the largest criminal investigation of public finance ever conducted by the DOJ.

87. On November 15, 2006, the Federal Bureau of Investigation ("FBI") raided the offices of and seized documents from the Defendant Brokers CDR and IMAGE.

88. Following the FBI raids, certain Defendants and their co-conspirators were served with subpoenas. The subpoenas sought detailed information from the companies dating back to 1992. The subpoenas asked for documents, e-mails, tapes or notes of phone conversations, and other information regarding "contracts involving the investment or reinvestment of the proceeds of tax-exempt bond issues and qualified zone academy bonds [as well as] related transactions involving the management or transfer of the interest rate risk associated with those bonds, including but not limited to guaranteed investment contracts; forward supply, purchase or delivery agreements; repurchase agreements; swaps; options; and swaptions." The subpoenas

also requested corporate organizational charts, telephone directories, and lists of all individuals involved with GICs and derivatives, in addition to all documents associated with “relevant municipal contracts awarded or intended to be awarded pursuant to competitive bidding” – including invitations to bid, solicitations, notices, requests for quotations or proposals issued to any provider, actual or proposed responses, amounts bid, and prices bid.

89. According to news reports and company filings, more than 30 banks, insurance companies, and brokers, have received governmental subpoenas, including the following: Trinity, CDR, FSA, IMAGE, Natixis, and AIG.

90. According to the Second Consolidated Amended Class Action Complaint, *In re Municipal Derivatives Antitrust Litigation*, MDL No. 1950, Master Docket No. 08-02516 (S.D. N.Y., filed June 18, 2009) (the “Class Complaint”), at least twelve current or former brokers at major Wall Street and other firms have been targeted for possible indictment by the DOJ or notified that they are part of the DOJ’s investigation.

91. A March 3, 2008 *Bond Buyer* article stated:

> Market participants said Friday that the individuals and firms known to have been subpoenaed or to have received target letters in the investigation may just be the tip of the iceberg.
>
> ….
>
> “Usually by the time an individual gets a target letter, the investigation is pretty far down the road and it’s an indication that indictments are going to be issued in the relative near terms,” said John K. Markey, a partner at Mintz Levin Cohn Ferris Glovsky & Popeo PC in Boston, and former federal and state prosecutor.
>
> Markey said that in a target letter, “The Department of Justice is informing an individual or his attorney that it already has substantial evidence of the commission of a federal crime. It usually is a sign that the individual is going to be indicted and it

> may prompt an attempt at a plea bargain or cooperation deal with the government."

GRAND JURY INDICTMENT AND RELATED ACTIONS

92. On October 9, 2009, a Grand Jury in the U.S. District Court for the Southern District of New York indicted CDR for Conspiring to Restrain Trade under 15 U.S.C. § 1; two counts of Conspiracy under 18 U.S.C. § 371; and three counts of Wire Fraud under 18 U.S.C. § 1343. *See* Indictment, *United States of America v. Rubin/Chambers, Dunhill Insurance Services, Inc., et al*, Case No. 09-CR-1058 (S.D.N.Y., filed Oct. 9. 2009) (the Indictment is referred to herein as the "Indictment"; the action in which the Indictment was issued is referred to herein as the "Criminal Action").

93. According to the Indictment, in the award and performance of a state housing agency investment agreement (to an entity other than UHC), CDR and its co-conspirators engaged in the following conduct in furtherance of the conspiracy:

a. On or about May 19, 2004, during an interstate telephone call between California and New York, David Rubin ("Rubin"), the founder, president and chief executive officer of CDR suggested to a bidder that it lower the rate it was prepared to quote because the issuer would have to give any money it earned at the higher rate to the IRS.

b. On or about May 20, 2004, the day of the bid, during an interstate telephone call between New Mexico and New York, the bidder checked with a co-conspirator at CDR to make sure that a bid at the rate suggested by Rubin would be a winning bid and then submitted a bid in accordance with Rubin's suggestion.

c. Beginning in approximately July, 2004, an unidentified provider made monthly interest payments to the state housing agency at an artificially suppressed rate until November 1, 2005.

94. The Indictment further states that on or about June 30, 2005, via interstate wire transfer from New York to Utah, CDR caused an unidentified provider to make an interest payment of approximately $264,977.20 to a state housing corporation, which payment was artificially suppressed because, at the time of the bid, CDR had given the provider information about bids from other providers on the basis of which the provider lowered the rates it was otherwise prepared to submit.

95. In the Criminal Action, the DOJ represented to the Court that its evidence included:

> . . . a folder labeled "Calls," which, when opened, provides access to five recorded conversations totaling about six minutes. The last item in the folder, labeled "Deal Information," is a spreadsheet that, among other things, provides the identifying information for and digests of those calls. In each of the calls, defendant Zarefsky [a CDR employee] is speaking to a provider about the time that bids were due. In the fourth call, Zarefsky tells the provider, "I can actually probably save you a couple bucks here." He then says that the provider can <u>lower</u> the rates he initially quoted by a "a dime" (10 basis points) – from 3.51% to 3.41% on one fund and from 5.26% from 5.15% on the second fund (actually 11 basis points). This bid for Utah Housing is listed in the voluntary Bill [of Particulars] as one of the transactions affected by the conspiracy charged in Count Three and is also featured in Count Five.

(Letter from R. Meiklejohn to V. Marrero, Document No. 35, Case No. 09-cr-1058 (S.D.N.Y., filed Feb. 23, 2010).)

96. The Voluntary Bill of Particulars in the Criminal Action identifies rigged auctions forming the basis for the criminal counts including the following UHC auctions:

a. The auction that took place on or about June 12, 2002 involving the UHC Single Family Mortgage Variable Rate Bonds, 2002 Series 1 Term Bonds and 2002 Series 2 Term Bonds;

b. The auction that took place on or about December 20, 1999 involving the UHC Single Family Mortgage Variable Rate Bonds, 1999 Series 3 and 1999 Series 4;

c. The auction that took place on or about December 19, 2000 involving the UHC Single Family Mortgage Variable Rate Bonds, Series 3 and Series 4;

d. The auction that took place on or about February 6, 2001 involving the UHC Single Family Mortgage Bonds, 2001 Series A;

e. The auction that took place on or about May 2, 2001 involving UHC Single Family Mortgage Bonds, 2001 Series B;

f. The auction that took place on or about June 21, 2001 involving UHC Single Family Mortgage Bonds, 2001 Series C;

g. The auction that took place on or about August 7, 2001 involving the UHC Single Family Mortgage Bonds, 2001 Series D;

h. The auction that took place on or about January 17, 2002 involving the UHC Single Family Mortgage Bonds, 2002 Series A;

i. The auction that took place on or about May 2, 2002, involving the UHC Single Family Mortgage Bonds, 2002 Series C;

j. The auction that took place on or about January 23, 2003 involving the UHC Single Family Mortgage Bonds, 2003 Series A; and

k. The auction that took place on or about September 10, 2003 involving the UHC Single Family Mortgage Bonds, 2003 Series F.

COMMUNICATIONS AMONG BROKERS AND PROVIDERS

97. According to the Class Complaint, providers discussed with each other the terms of their bids and discussed their collusive activities with Defendant Brokers and others.

98. According to the Class Complaint, many providers maintained trading desks in common areas. The conspiring providers sent e-mail communications from trading desks, made telephone calls from these trading desks, and recorded telephonic conversations. The conspiring providers conducted unlawful communications by other means as well, such as cellular telephones, personal digital assistants, and in-person meetings.

99. According to the Class Complaint, on multiple occasions, conspiring providers communicated through conspiring brokers who would act as authorized go-betweens of the in communicating and coordinating the terms of the providers' respective bids. In some auctions, the provider designated to win the particular auction placed its bid after it had been provided with the terms of the bids provided by the other bidders, a practice known as a "last look" that is expressly forbidden by IRS regulations.

100. According to the Class Complaint, at times, providers engaged in complementary trades to compensate other providers who either did not submit bids or who engaged in the provision of sham bids. On other occasions, the winning provider would secretly compensate one or more providers for declining to submit a bid.

101. The Defendants knowingly participated in the illegal agreement, understanding and conspiracy not to compete and to rig bids. The Defendant Brokers and other brokers served

as a conduit for indirect communications among the Defendant Providers that were *per se* illegal. The Defendant Providers shared their wrongful profits from the illegal agreement, understanding and conspiracy by paying kickbacks to Defendant Brokers.

102. In addition, Defendants have participated in the following conduct to limit competition, rig bids and to create the appearance of competition where there was none:

a. Courtesy bids submitted to create the appearance of competition where there was none;

b. Bids known to be unrealistically low and deliberately losing bids;

c. Bidding processes where only one bid was sufficiently high to make the deal work;

d. Agreements to share profits from a winning bid with a losing bidder through transactions between Defendant Providers and other conspirators;

e. Conduct in violation of IRS regulations relating to the bidding process;

f. Secret "last look" agreements; and

g. Agreements not to bid.

103. Moreover, the Defendants and others communicated with each other and with other co-conspirators concerning the following:

a. Winning bids that would be allocated to Defendant Providers and other co-conspirators;

b. Confirming understandings that bids would be won by a particular Defendant Provider or other co-conspirators;

c. Confirming understandings that bids would be lost by particular Defendant Providers or other co-conspirators;

d. The fact that bids were being rigged; and

e. Bid levels that would be necessary by Defendant Provider or other co-conspirators to win or lose a bid.

104. According to the Class Complaint, individuals who have acknowledged that they are targets of federal prosecution and/or have been identified as engaging in illegal communications and conduct in furtherance of the conspiracy to restrain competition include, but are not limited to, the following:

a. Douglas Campbell ("Campbell") had numerous communications with, among others, Martin Stallone of IMAGE, Douglas Goldberg of CDR, and Dani Naeh of CDR, relating to the alleged conspiracy. Campbell also authored an electronic mail message dated June 28, 2002, discussing kickbacks to CDR and others.

b. Dean Pinard ("Pinard") was the recipient of a March 11, 2002 e-mail discussing the provision of secret kickbacks to IMAGE for its participation in the alleged conspiracy.

c. Philip Murphy ("Murphy") had numerous communications with Martin Stallone of IMAGE. Murphy was also a recipient of the aforementioned May 11, 2002 e-mail regarding IMAGE and the recipient of a June 28, 2002 e-mail on kickbacks from Campbell.

105. According to the Class Complaint, individuals employed by the Defendants and others who have engaged in the illegal agreement, understanding and conspiracy include but are not limited to the following:

a. David Lail ("Lail") received a kickback from Natixis related to blind pool deals.

b. Martin Stallone ("Stallone"), of IMAGE,had various communications with Murphy, Campbell and others relating to the alleged conspiracy.

c. Michael Frasco ("Frasco") a Managing Director at Natixis, had various communications with a "Confidential Witness".[1]

d. Douglas Goldberg ("Goldberg"), of CDR, had numerous discussions with Campbell and the Confidential Witness. His FINRA disclosure indicates that he is under investigation.

e. Dani Naeh ("Naeh"), of CDR, had discussions with the Confidential Witness related to the conspiracy.

106. The interconnected nature of the Municipal Investment Agreements industry facilitated and reinforced the conspiratorial conduct alleged herein, leading to the massive, multi-agency government investigation. As the *Bond Buyer* reported on November 21, 2006:

> The industry tends to be quite intertwined and interconnected," said Willis Ritter, a partner at Ungaretti & Harris here. "Virtually all the major houses are involved in selling [GICs], so if you think you've found something about one, you suspect you're going to find it about all of them.

---

[1] The "Confidential Witness is an individual referenced in the Class Complaint. Information attributed to the Confidential Witness is derived from the Class Complaint.

EXAMPLES OF PARALLEL CONDUCT

107. According to the Class Complaint, the Confidential Witness learned of the aforementioned collusive conduct after he joined Bank of America's municipal investment trading desk in April of 1999 on the recommendation of executives from Defendant Broker IMAGE. He was assigned to work with IMAGE, and dealt primarily with Stallone.

108. According to the Class Complaint, the Confidential Witness suggested to Stallone that they change bids on the transactions and that Stallone was receptive to the suggestions.

109. According to the Class Complaint, providers often knew ahead of time if they would win an auction or get a deal. Providers also understood that on some deals they would not get the winning bid, but knew that they would make it up on other deals where it was agreed they would be the winning bidder.

110. According to the Class Complaint, the Confidential Witness and others used various verbal cues to rig bids. One approach was to ask if the bid was a "good fit," in order to elicit from Stallone information on competing bids. Sometimes Stallone would say the bid was "aggressive" and had to be reworked to conform to the conspiratorially-set bid range. At other times, Stallone would ask for a specific number, which was intended to be in furtherance of the alleged conspiracy. Stallone would also say that the provider could get more out of a particular deal if it would include a specified brokerage fee -- a kickback to IMAGE for steering business to it. On occasion, if Stallone were unavailable, the Confidential Witness would deal with Peter Loughead ("Loughead") of IMAGE.

111. According to the Class Complaint, the Confidential Witness would signal that he wanted the winning bid by telling Stallone it "really wanted to win that trade" or had an "axe"

for that deal. Often, Stallone helped a provider on deals where the latter introduced IMAGE to the issuer and got it hired as a broker.

112. According to the Class Complaint, Stallone would also provide information to the Confidential Witness about competing bids, saying how other providers saw the market or indicating that "the market was around here" or stating that another company "was working a long time on this and they see the market here" or promising that "I will call you when I get the market."

113. In addition to allowing the Defendant Providers and others to rig bids and allocate customers, according to the Class Complaint, the use of sham courtesy bids was important to ostensibly meet the IRS's safe harbor requirement of bids from at least three "reasonably competitive" providers. Stallone would often ask the Confidential Witness to provide a courtesy bid. Likewise, there exists an audiotape of a conversation between Campbell and another provider, where the latter told the former that it wanted to win the trade in question and therefore wanted a courtesy bid.

114. According to the Class Complaint, the Confidential Witness was told by Stallone that the latter had requested and obtained courtesy bids from NatWest. On at least one occasion, Stallone told the Confidential Witness to back down from a trade because it was slated to go to another provider.

115. Similarly, according to the Class Complaint, Stallone told the Confidential Witness at one point that he would get another provider to submit a courtesy bid.

116. In another instance, according to the Class Complaint, Stallone said a provider was willing to submit a sham bid on business it did not want.

117. According to the Class Complaint, at one point, the Confidential Witness met Frasco of Natixis at the Plaza Hotel. Frasco said Natixis had submitted bids on business it had no expectation of winning.

118. According to the Class Complaint, audiotapes confirm other examples of solicitations to provide collusive sham bids. In one instance, Campbell told Goldberg of CDR that a provider was willing to make a bid even though it was not interested in the transaction in question and had no intention of winning the bid.

119. According to the Class Complaint, Defendant Providers and others like Natixis also received "last looks" to further their collusive bidding practices.

120. According to the Class Complaint, Stallone arranged sham courtesy bids from providers for one set of trades involving CDs on escrow accounts for Pennsylvania school districts and other entities.

121. Other collusive municipal derivative trades brokered through IMAGE, identified in the Class Complaint, include: (a) a forward purchase agreement for the Pennsylvania Intergovernmental Cooperation Authority; (b) investment agreements for the Virgin Islands; (c) a forward purchase agreement for the Guam Power Authority; (d) a deposit agreement involving Springfield Township; and (e) a forward purchase agreement for Biola University. Stallone and others were involved on behalf of IMAGE.

122. Other collusive municipal investment trades that were brokered through CDR, according to the Class Complaint, include the following: (a) a forward purchase agreement for the University of Tampa; (b) a forward purchase agreement for the Tampa Port Authority; (c) a transaction involving Hillcrest Healthcare System, where Bank of America engaged in bid

collusion with JP Morgan; (d) forward purchase and escrow agreements involving the Art College of Design; (e) a transaction involving the New Jersey Transit Corporation; and (f) an escrow funding and a forward purchase agreement for the Commonwealth of Massachusetts. Naeh and/or Goldberg were involved for CDR.

123. According to the Class Complaint, CDR was also involved in suspect transactions involving Municipal Investment Agreements related to refunding bonds issued by the Oxnard, California, School District and the Delano, California Joint High School District. These instances are also being investigated as part of the overall federal investigation.

124. According to the Class Complaint, providers rewarded others with kickbacks for collusive activities in furtherance of the alleged conspiracy. This is illustrated by a June 28, 2002 e-mail which contained a list of the situations where one provider paid an external business contact on a transaction where the external business contact was not involved in the transaction (*e.g.*, the external business contact was not a broker, investment banker or did not provide the client with market pricing verification). The list showed that $182,393 was paid to CDR and others. The payments were described as a bid to build relationships or to say "thanks for all the swap business."

125. Among other instances of bid-rigging and kickbacks involving CDR is the $453 million GIC to the City of Atlanta in 2002, in which CDR acted as the broker and handled the bidding. According to the Class Complaint, the IRS has indicated that the other bidders on the deal submitted "courtesy losing bids" to enable a pre-selected provider to win the transaction.

126. As another example, according to the Class Complaint, CDR advised Jefferson County, Alabama (the county in which Birmingham is situated) on interest rate swaps in which it

paid six times above the prevailing rate in fees. These transactions are being investigated by the DOJ and the SEC.

127. According to the Class Complaint, Natixis was involved in receiving diverted profits in deals involving Municipal Investment Agreements. Natixis worked with the broker to rig bids to allow Natixis, as the winning provider, to underpay for the GIC and simultaneously overpay for other investment agreements and remarketing fees, diverting arbitrage profits back to the broker. These unlawful bid-rigging schemes related to the following: a $128 million pooled variable-rate bond deal for the Arizona Health Facilities Authority; two hospital revenue bond issues totaling over $300 million for Ohio Hospital Capital, Inc.; $250 million in revenue bonds sold by Knox County, Tennessee's Health, Educational & Housing Facility; $84 million in pooled variable-rate bonds sold by the Missouri Health & Educational Facilities Authority; and $86.5 million in pooled variable-rate bonds sold by the South Georgia Hospital Authority. Natixis won all of these bids, in one case providing a payment directly to the individual broker employee who provided the necessary bidding certificates.

128. The Butler Area School District and Butler County General Authority filed suit for unlawful and anticompetitive collusion in connection with a swaption and a Constant Maturity Swap Amendment dated August 22, 2006. It alleges that IMAGE was involved in the anticompetitive activity.

129. As a further example, according to the Class Complaint, the IRS scrutinized a $27 million bond sold by Pima County, Arizona's Industry Development Authority to help individuals buy homes that involved Société Générale and CDR. The transactions involved an abusive scheme that diverted investment earnings to deal participants. The IRS said that it

"already has evidence of significant wire transfer payments... from [Société Générale] to the firm [CDR] that promoted and structured these transactions." The awarding of bids for GICs was prearranged to allow Société Générale to inflate various fees and divert illegal arbitrage as part of what the IRS called a "larger plan involving numerous other bond issuances." These payments constituted secret kickbacks between a Defendant Broker and a Defendant Provider in furtherance of the market allocation that was part of the conspiracy.

130. According to the Class Complaint, Pima County was not the only instance of such illegal kickbacks flowing from Société Générale to CDR or vice versa. Others included the East Bay-Delta, California, Housing & Finance Agency; the Harrisonburg, Virginia, Redevelopment & Housing Authority; Pulaski County, Arkansas; the Albuquerque, New Mexico Region HI Housing Authority ("Region III"); the Riverside-San Bernardino Housing & Finance Agency; and the San Diego Area Housing & Finance Agency. In connection with the Region III deal, the IRS noted that "Société Générale had an ongoing arrangement with CDR to promote similar abusive arbitrage devices," and that "CDR and Société Générale appear to have fixed pricing on financial products to facilitate the diversion of arbitrage."

CLAIM FOR RELIEF
15 U.S.C. § 1

131. Plaintiff incorporates by reference the preceding paragraphs of this Complaint as though fully set forth herein.

132. Defendants participated in a conspiracy to fix, maintain or stabilize the price of, and to rig bids and allocate customers and markets for, Municipal Investment Agreements sold in the United States and its territories in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

133. The activities of Defendants and their co-conspirators, as described in this Complaint, were within the flow of and substantially affected interstate commerce.

134. Defendants and their co-conspirators issued and/or sold Municipal Investment Agreements in a continuous and uninterrupted flow of interstate commerce to Utah and other states.

135. The conspiracy in which the Defendants and their co-conspirators participated had a direct, substantial, and reasonably foreseeable effect on United States commerce.

136. The combination and conspiracy alleged herein has had the following effects, among others:

a. Price competition in the sale of Municipal Investment Agreements has been restrained, suppressed and/or eliminated in the United States;

b. Bids charged by Defendants and their co-conspirators to Plaintiff for Municipal Investment Agreements were fixed, stabilized and maintained at non-competitive levels throughout the United States;

c. Customers and markets of Municipal Investment Agreements were allocated among Defendants and their co-conspirators;

d. Plaintiff received lesser interest rates on Municipal Investment Agreements than it would have received in a competitive marketplace, unfettered by Defendants and their co-conspirators' collusive and unlawful activities;

e. Competition in the sale of Municipal Investment Agreements was restrained, suppressed and eliminated in the United States; and

f. As a direct and proximate result of the illegal combination, contract or conspiracy, Plaintiff has been injured and financially damaged, in amounts to be determined.

137. Pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, Plaintiff seeks to recover treble damages and the costs of this suit, including reasonable attorneys' fees, against Defendants for the injuries sustained by Plaintiff by reason of the violations alleged herein.

PRAYER FOR RELIEF

Plaintiff requests the following relief:

A. That the contract, combination or conspiracy, and the acts done in furtherance thereof by Defendants and their co-conspirators, be adjudged to have been a *per se* violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;

B. That judgment be entered for Plaintiff and against Defendants for treble damages as allowed by law, together with the costs of this action, including reasonable attorneys' fees;

C. That Plaintiff be awarded pre-judgment and post-judgment interest at the highest legal rate to the extent provided by law; and

D. That Plaintiff be awarded such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury.

DATED this 19th day of January, 2011.

JONES WALDO HOLBROOK & McDONOUGH PC

By: /s/ Billie J. Siddoway

Timothy C. Houpt
Billie J. Siddoway
Attorneys for Plaintiff Utah Housing Corporation